



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
Phone 800-227-8917
<http://www.epa.gov/region08>

JAN 26 2006

Ref: 8ENF-L

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ben Sautter
Jefferson County Road Department
111 Odyssey Lane
P.O. Box H
Boulder, Montana 59632

Re: Findings of Violation and Administrative
Order for Compliance
Docket No. CWA-08-2006-0016

Dear Mr. Sautter:

Based on our review of all available information, the United States Environmental Protection Agency ("EPA") has determined that Jefferson County is in violation of the Clean Water Act, as amended ("CWA"). The CWA requires that an authorizing permit be obtained from the United States Army Corps of Engineers prior to the discharge of dredged or fill material into waters of the United States. See, 33 U.S.C. § 1311. Waters of the United States include both surface waters and wetlands as defined by 33 C.F.R. § 328.3.

Specifically, you, or persons acting on your behalf, have discharged dredged material into waters of the United States without authorization under the CWA. These discharges of pollutants into wetlands and other waters of the United States have occurred on a Jefferson County right-of-way located in Sections 22, 23, and 24, Township 6 North, Range 7 West, Jefferson County, Montana.

Enclosed is a document entitled "Findings of Violation and Administrative Order for Compliance" ("Order") which specifies the nature of the violations and describes actions necessary in order for you to achieve compliance with the CWA. EPA's authority for such action is provided under section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3). Pursuant to the Order, within five days after you receive the Order, you must inform EPA in writing of your intent to fully comply with the Order.

The CWA requires the Administrator of EPA to take all appropriate enforcement action necessary to secure prompt compliance with the CWA and any order issued thereunder. Section



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309 of the CWA authorizes a variety of possible enforcement actions, including filing of a civil or criminal action, administrative penalty action, and/or debarment from Federal contracts and/or loans for any noncompliance with the CWA or an order issued pursuant to the CWA. Please be advised that failure to comply with the requirements of the Order is a violation of the Order and may be enforced through the mechanisms referenced above. Please also be advised that the issuance of this Order does not preclude civil or criminal actions in the U.S. District Court pursuant to sections 309(b) or (c) of the CWA, 33 U.S.C. §§ 1319(b) or (c), or assessment of civil penalties pursuant to sections 309(d) or (g) of the CWA, 33 U.S.C. §§ 1319(d) or (g), for the violations cited in the Order or for any other violations that Jefferson County may have committed prior to or may commit after the issuance of the enclosed Order.

Please review the Order carefully. If you have any questions, the most knowledgeable people on my staff are Wendy Silver, Enforcement Attorney, at 303-312-6637 and Kris Knutson, Enforcement Officer, at 406-457-5021.

Sincerely,



Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosure

1. Findings of Violation and Administrative Order for Compliance

cc: Allan Steinle, U.S. Army Corps of Engineers, w/enclosures
John Arrigo, DEQ, w/enclosures
Wendy Silver, 8ENF-L, w/enclosures
Kris Knutson, 8MO, w/enclosures

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2006 JAN 26 PM 12:11

IN THE MATTER OF:

**Jefferson County
111 Odyssey Lane
P.O. Box H
Boulder, Montana 59632**

Respondent.

**FINDINGS OF VIOLATION AND
ADMINISTRATIVE ORDER FOR
COMPLIANCE**

Docket No. CWA-08-2006-0016

I. STATUTORY AUTHORITY

1. This Findings of Violation and Administrative Order for Compliance ("Order") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by section 309 of the Clean Water Act ("CWA"), 33 U.S.C. § 1319. This authority has been properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8. The Order is based on the findings of violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), which, among other things, prohibits the discharge of pollutants into waters of the United States except as in compliance with section 404 of the CWA, 33 U.S.C. § 1344.

II. FINDINGS OF VIOLATION

2. Jefferson County, hereafter "Respondent", is a body politic and corporate established under the laws of Montana with offices located in Boulder, Montana.

3. At all relevant times, Respondent owned, controlled or operated property containing wetlands and other waters of the United States in certain areas. Said property,

wetlands, and other waters are located in Sections 22, 23, and 24, Township 6 North, Range 7 West, Jefferson County, Montana, hereafter referred to as the "Site".

4. In or around June, 2005, Respondent, or persons acting on behalf of Respondent, discharged or caused to be discharged, without prior authorization from the United States Army Corps of Engineers ("Corps"), fill material into wetlands and other waters of the United States at the Site.

5. The wetlands and other waters of the United States at the Site are unnamed tributaries in Alta Gulch and Finn Gulch, and wetlands adjacent thereto. The unnamed tributaries flow into the Boulder River, which flows into the Missouri River, an interstate water.

6. On June 15, 2005, personnel from the Corps and EPA inspected the Site and observed five areas of unauthorized fill activity at the Site along Boulder River Road: (1) at the beginning of the road project, in the lower section of the Site, rock material had been pushed off the road into the Boulder River, covering an area of the river approximately 40 feet long and 10 feet wide; (2) further up the road, a culvert had been installed on Alta Gulch, in an unnamed tributary to the Boulder River; (3) further up the road, near some corrals, a new culvert had been installed on Finn Gulch on another unnamed tributary to the Boulder River; and (4) above the corral area on Boyle Gulch, several pieces of heavy machinery were observed performing road work, resulting in material cut from the uphill side of the slope filling numerous wetland areas located along the Boulder River at the base of the fill slope.

7. On June 15, 2005, the Corps issued a cease and desist Order to Jefferson County and the U.S. Department of Labor Job Corps Civilian Conservation Center, ordering them to stop work at the Site.

8. By letter dated June 20, 2005, the Corps referred the case to EPA.
9. The activities described in paragraphs 4 and 6 of Section II of this Order were performed using common earthmoving vehicles and equipment, including a bulldozer, scrapers and a loader, which were operated by Respondent and/or by one or more individuals on behalf of Respondent.
10. The wetlands and other waters of the United States that were filled and disturbed by the actions of Respondent or persons acting on Respondent's behalf, as described in paragraphs 4 and 6 of Section II of this Order, provide various functions and values, including wildlife habitat for songbirds, raptors, mammals, reptiles and amphibians; water quality enhancement; flood storage; and food chain support.
11. Respondent is a "person" within the meaning of section 502(5) of the CWA, 33 U.S.C. § 1362(5).
12. The discharged fill materials described in paragraphs 4 and 6 of Section II of this Order are, and were at all relevant times, "fill material" within the meaning of 33 C.F.R. § 323.2(e) and "pollutants" within the meaning of section 502(6) of the CWA, 33 U.S.C. § 1362(6).
13. The vehicles and equipment described in paragraph 9 of Section II of this Order are, and were at all relevant times, each a "point source" within the meaning of section 502(14) of the CWA, 33 U.S.C. § 1362(14).
14. The impacted wetland and unnamed tributaries were, at all relevant times, "waters of the United States" within the meaning of 33 C.F.R. § 328.3(a) and therefore "navigable waters" within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7).

15. The placement of fill material into the wetland and unnamed tributaries as described in paragraphs 4 and 6 of Section II of this Order constitutes the "discharge of pollutants" within the meaning of section 502(12) of the CWA, 33 U.S.C. § 1362(12).

16. Section 301(a) of the CWA, 33 U.S.C. § 1311, prohibits, among other things, the discharge of pollutants by any person into waters of the United States except as in compliance with section 404 of the CWA, 33 U.S.C. § 1344.

17. Section 404 of the CWA, 33 U.S.C. § 1344, sets forth a permitting system authorizing the Secretary of the Army, acting through the Chief of Engineers of the Corps, to issue permits for the discharge of dredged or fill material into waters of the United States.

18. 33 C.F.R. § 323.3(a) specifies that, unless exempted pursuant to 33 C.F.R. § 323.4, a permit issued by the Corps is required for the discharge of dredged or fill material into waters of the United States.

19. Respondent is not and never has been authorized by a permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, to conduct any of the activities described in paragraphs 4 and 6 of Section II of this Order.

20. Respondent's activities described in paragraphs 4 and 6 of Section II of this Order violate section 301 of the CWA, 33 U.S.C. § 1311. Each discharge of pollutants from a point source by Respondent into waters of the United States without the required permits issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, constitutes a violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a). Each day the discharges remain in place without the required permits constitutes an additional day of violation of section 301(a).

21. The removal of the fill material illegally discharged into waters of the United States at the Site and restoration of the impacted waters to a condition that closely approximates their condition and function prior to the discharge of the fill material, can be achieved as a practical matter through commonly used methods of construction, digging, filling, revegetation, and best management practices.

22. Activities to be carried out under this Order are remedial, not punitive, and are necessary to achieve the CWA's objective "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters," as specified in section 101(a) of the CWA, 33 U.S.C. § 1251(a). The removal and restoration described in paragraph 21 of Section II of this Order are appropriate to alleviate actual and potential harm to water quality, aquatic habitat, and wildlife habitat caused by Respondent's unpermitted activities.

23. This Order was issued after consultation and coordination with the Corps' Omaha District, Helena Regulatory Office.

III. ORDER

Based upon the foregoing FINDINGS OF VIOLATION, and pursuant to the authority vested in the Administrator of the EPA pursuant to sections 308 and 309(a) of the CWA, 33 U.S.C. §§ 1318 and 1319(a), as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, it is hereby ORDERED:

1. Respondent shall immediately terminate all discharges of dredged or fill material into waters of the United States, now and in the future, unless specifically authorized by the

Corps under a valid permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344. This prohibition includes all ditching, draining, mechanical land clearing, dredging, filling, grading, leveling, installation of utilities, construction, and any other activities that result in a discharge of dredged or fill material into waters of the United States.

2. Within thirty (30) calendar days of the receipt of this Order, Respondent shall submit to EPA for review and approval a Restoration Plan for the removal of the discharged fill materials described in paragraphs 4 and 6 of Section II of this Order as well as any other unauthorized fills to waters of the U.S. at the Site, and restoration of the areas impacted by the discharged fill materials. The Restoration Plan shall be prepared in accordance with “U.S. Environmental Protection Agency - Region VIII Section 404 Enforcement: General Guidelines for Removal and Restoration Plans,” attached hereto as Exhibit A. Additionally, the Restoration Plan shall:

1. Include a detailed work plan and schedule for all of the work to be accomplished by the Restoration Plan, including the application for any required permits, providing for completion of all aspects of the restoration work no later than August 1, 2006. The work plan shall, at a minimum, provide specific and detailed provisions for:
 - i. Removal of the discharged fill materials to upland areas in full compliance with and with prior approval of all Federal, State and local requirements, and providing a detailed description (including exact location) of the site to where the material will be relocated and proof that the owner of such site has approved the relocation of the discharged fill materials to such site; and

ii. Stabilization of any fill material which is placed adjacent to waters of the United States to prevent incidental movement of this material into such waters.

2. Be prepared by a qualified consultant experienced in stream and wetland restoration, include detailed professional drawings of the restoration site, and comply with all Federal, State, and local requirements.

3. EPA will review the Restoration Plan and approve it or reject it with comments. If EPA rejects the Restoration Plan, Respondent shall, within fifteen (15) calendar days of receipt of EPA's rejection letter, submit a revised plan that corrects the deficiencies identified by EPA.

4. Upon receiving EPA's written approval of the Restoration Plan, Respondent shall obtain all necessary permits to implement the EPA-approved plan and then commence restoration activities in accordance with the approved plan, including the time frames specified therein, and all granted permits. Respondent shall demonstrate that all necessary permits have been granted by providing complete copies of all such permits, and any amendments thereto, to EPA within seven (7) calendar days of issuance of each permit.

5. This Order is not a permit or an authorization to place or discharge dredged or fill material in waters of the United States. Respondent shall consult with the Corps at the following address and telephone number to determine if any work to be performed pursuant to this Order requires a permit from the Corps under section 404 of the CWA:

U.S. Army Corps of Engineers, Omaha District
Helena Regulatory Office
10 West Fifteenth Street, Suite 2200
Helena, Montana 59626
Telephone: (406) 441-1375

If required, Respondent shall obtain such permit(s) and provide a copy to EPA pursuant to paragraph 8 of Section III of this Order prior to initiating any work that is to be performed pursuant to this Order.

6. All mitigation activities conducted pursuant to this Order and involving the use of heavy construction equipment shall be undertaken by an equipment operator experienced in wetland and stream mitigation.

7. At least ten (10) calendar days prior to the anticipated completion of all restoration activities in accordance with the approved Restoration Plan, Respondent shall notify EPA so that EPA can arrange a final interagency inspection of the completed restoration activities.

8. Respondent shall submit three (3) copies of the Restoration Plan, all notifications, and related correspondence to:

Kristine Knutson
U.S. Environmental Protection Agency
10 West Fifteenth Street, Suite 3200
Helena, Montana 59626
Telephone: (406) 457-5021
Facsimile: (406) 457-5055

A copy of the restoration plan, all notifications, and related correspondence shall also be provided to:

Wendy Silver, 8ENF-L
U.S. Environmental Protection Agency, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466
Telephone: 303-312-6637
Facsimile: 303-312-6953

9. Any deliverables, plans, reports, specifications, schedules, and attachments required by this Order are, upon approval by EPA, incorporated into this Order. Any non-compliance with such EPA-approved deliverables, plans, reports, specifications, schedules, and attachments shall be deemed a failure to comply with this Order and subject to EPA enforcement.

10. Respondent shall allow, or use its best effort to allow, access by any authorized representatives of EPA, the Corps, the Natural Resources Conservation Service, the U.S. Fish and Wildlife Service, the Soil Conservation Service, the Montana Department of Environmental Quality, the Montana Department of Fish, Wildlife and Parks and the U.S. Forest Service, or any of these agencies' contractors, upon proper presentation of credentials, to sites and records relevant to this Order for any of the following purposes:

1. To inspect and monitor progress of the activities required by this Order;
2. To inspect and monitor compliance with this Order; and
3. To verify and evaluate data and other information submitted to EPA.

This Order shall in no way limit or otherwise affect EPA's authority, or the authority of any other governmental agency, to enter the site, conduct inspections, have access to records, issue notices and orders for enforcement, compliance, or abatement purposes, or monitor compliance pursuant to any statute, regulation, permit, or court order.

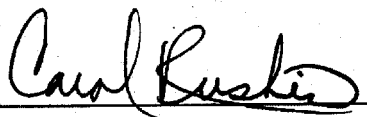
11. This Order shall be effective upon receipt. Within five (5) calendar days of receipt of this Order, Respondent shall inform EPA in writing of Respondent's intent to fully comply with the Order.

12. Please be advised that section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by the Civil Monetary Penalty Inflation Adjustment Rule, 69 Federal Register 7121

(February 13, 2004), authorizes civil penalties of up to \$32,500 per day for each violation of section 301 of the CWA, 33 U.S.C. § 1311, and for each violation of an order issued by the Administrator of EPA under section 309(a) of the CWA, 33 U.S.C. § 1319(a). Additionally, section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes EPA to impose administrative penalties for violations of the CWA. Further, section 309(c) of the CWA, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the CWA. Issuance of this Order shall not be deemed to be an election by the United States to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for violations giving rise to the Order.

13. Compliance with the terms and conditions of the Order shall not be construed to relieve Respondent of Respondent's obligations to comply with any applicable federal, state or local law. Failure by Respondent to complete the tasks described herein in the manner and time frame specified pursuant to this Order may subject Respondent to a civil action under section 309 of the Clean Water Act, 33 U.S.C. section 1319, for violation of this Order.

DATED this 27th day of January, 2006.



Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

U. S. ENVIRONMENTAL PROTECTION AGENCY - REGION VIII

SECTION 404 ENFORCEMENT:

GENERAL GUIDELINES FOR REMOVAL AND RESTORATION PLANS

The following guidelines serve as general specifications for preparing removal and restoration plans to remediate the unpermitted filling of wetlands. As environmental conditions vary at every site, precise specifications will depend upon the environmental conditions peculiar to the site in question. The size of the wetland area to be restored, its biological and physical characteristics, and the level of disturbance the wetland has experienced will further define the scope and complexity of the restoration plan. In most cases, the types of information listed below represent the minimum required to formulate an acceptable removal and restoration plan. When these guidelines are incorporated into an EPA Administrative Order, the recipient of the Order should obtain the approval of EPA's technical representative on the case before departing from the general specifications outlined below.

I. Existing Physical Conditions

- A. A surveyed site plan depicting property boundaries, streets, buildings, waterbodies (with ordinary high water line indicated), wetlands, FEMA 100-year floodplain (if applicable), areas of unpermitted fill, elevation contours, and other ground surface features at a scale no greater than 1 inch = 40 feet. This plan shall include a cross-section view of the site which shows soil depths, fill depths, and average depth to groundwater across the site.
- B. A narrative description of existing physical conditions, including the area of the site; area of unpermitted fill; existing wetlands (including the types of vegetation); the soil types present (including the types of unpermitted fill present); the hydrologic regime of the site; and other relevant information.

II. Proposed Physical Conditions

- A. Using the site plan described in I.A. as a base, show the exact areas where remedial activities will occur (e.g., removal of fill, replacing dredged material into ditches, etc.). Indicate proposed finished grades, expected ordinary high water elevations, the location of proposed plantings/seedings, and the location of all sediment and erosion control structures (e.g., hay bales, silt screens, etc.). This plan shall include a cross-section view of the site which shows proposed soil depths and average depth to groundwater across the site.
- B. Provide a narrative description of the remedial work to occur, including the methods and equipment to be employed; how the equipment will gain access to the site to perform the work; the location of the ultimate disposal site for any removed fill; how the work will progress across the site; a listing of the plant species to be seeded/planted at the site; the sources of the plant material (note: as a rule, transplanting of plant stock will not be permitted); the planting method(s) and scheme (i.e., physical layout of how plant material will be installed); any methods to be used to minimize adverse impacts while remedial work is underway; the expected hydrologic regime of the site in its restored condition; and other relevant information.
- C. Delineate the area(s) on the site to be restored by installation of flagging, sedimentation and erosion control structures, or other appropriate method; this delineation shall represent the limit of construction activities such that no work shall occur beyond these boundaries.

III. Actual Restored Physical Conditions

- A. Using the site plan described in I.A. as a base, show the actual physical conditions at the site at the completion of grading activities (i.e., an "as-built" plan), including actual finished grades and all pertinent ground surface features. This plan shall include a cross-section view of the site which shows actual soil depths and average depth to groundwater across the site. This as-built plan shall be prepared and submitted prior to planting/seeding activities.

IV. Monitoring/Measures of Success

- A. Normally, monitoring shall be performed midway through and near the end of the first and second growing seasons, then annually near the end of each successive growing season for the duration of the required monitoring period. Monitoring shall be performed for a period of three to five years, depending upon the scope and complexity of the remedial efforts required.
- B. A monitoring plan shall incorporate a simple statistical approach to assessing

relative success or failure of restoration efforts (e.g., transects with sampling stations for measuring parameters such as percent areal cover in each vegetative stratum). A permanent photographic record shall be included as part of the monitoring plan.

- C. Depending upon the scope and complexity of the remedial efforts, general criteria to measure success shall be determined by EPA. These criteria shall be directly related to reestablishing the structural components of the aquatic ecosystem being restored. A general provision shall be included to allow for corrective action to be taken, at the direction of EPA, should monitoring show that criteria for success are not being met.
- D. A report shall be prepared and submitted after each monitoring event which describes the environmental conditions at the site and assesses relative success or failure of restoration efforts. This report shall include photographic evidence as well. This report shall identify any problems discovered and recommend appropriate corrective action to ensure the success of restoration.

V. Inspections

- A. The plan shall provide for inspections by EPA personnel after installation of all sedimentation and erosion control structures, after completion of grading activities, after completion of initial planting/seeding activities, and after monitoring indicates that the criteria for success have been attained.

VI. Schedule

- A. A comprehensive schedule integrating all removal, restoration, inspection, and monitoring activities as well as report/product submissions shall be included.